.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4048 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SV CHAUDHARY

Versus

COMMISSIONER OF SALES TAX

Appearance:

1. Special Civil Application No. 4048 of 2001

MR AS SUPEHIA for Petitioner No. 1

Mr.Dabhi, Asst.GOVERNMENT PLEADER for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 1-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 03/02/2003

ORAL JUDGEMENT

With the consent of learned counsel for both

sides, matter is taken up for final hearing.

2. The short facts of the case are that the petitioner was serving as Sales Tax Inspector and retired on 31.3.01 on his reaching the age of superannuation. The petitioner was granted higher payscale of Rs.2000-3500/- by the order dated 15.10.1993 with effect from 1.4.88. After the retirement by the letter dated 25.5.01 the petitioner has been informed by the respondent No.2 that the order granting higher payscale of Rs.2000-3500/- has been cancelled and the petitioner should give consent for deduction of overpayment made to him from the gratuity amount. Therefore, under the circumstances, the present petition is preferred.

3. Heard Mr.Supehia for the petitioner and Mr.Dabhi, Ld.AGP for respondents. The present case is covered by the decision of this court, dated 28.1.03 in SCA No.6006/02 and allied matters. It is necessary to take note that in the aforesaid decision reliance was placed upon the decision of the Division Bench of this court dated 4.4.01 in LPA No.578/00 in SCA No.2196/99 and also the judgment of the Apex Court in the matter of P.H.Reddy vs N.T.R.O reported in 2002(2) SLR. As per the reasons recorded in the said decision, dated 28.1.03 in SCA No.606/02 and allied matters recovery can not be effected from the employee concerned on account of erroneous payment made by fixation of higher payscale when it is not the case of the department that the said payment of higher payscale was on account of any misrepresentation, fraud or misdeed which can be attributed to the employee concerned. In my opinion no elaborate discussion is required since the matter is squarely covered by the decisions referred hereinabove.

4. Hence, the impugned orders dated 25.5.01 and 30.5.01 ordering recovery of difference of amount are quashed.

It is made clear that if any amount of retiral benefits is withheld on account of the impugned decisions for recovering the amount, same shall be released forthwith in accordance with law.

5. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

3.2.03 (JAYANT PATEL,J)